

HOUSTON OIL AND MINERALS CORPORATION
LELAND A. HODGES, TRUSTEE

IBLA 75-459
IBLA 75! 657

Decided September 30, 1975

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers that embrace lands within the Carrizozo Lava Flow.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations -- Rules of Practice: Appeals: Generally

On appeal from decisions rejecting oil and gas lease offers insofar as they include lands within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the lands under a no surface occupancy stipulation, and the offerors indicate they would accept such a stipulation for all the lands at issue, the decisions will be set aside and the cases remanded for consideration of issuance of leases containing no surface occupancy stipulations on the lands in the lava flow.

APPEARANCES: John E. Walters, Vice President, Houston Oil and Minerals Corporation; Leland A. Hodges, Esq., Fort Worth, Texas.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Houston Oil and Minerals Corporation and Leland A. Hodges, Trustee, have each appealed from decisions of the

New Mexico State Office, Bureau of Land Management (BLM), rejecting in part their oil and gas lease offers 1/ for lands in T. 8 S., R. 8 E., and Ts. 6-8 S., R. 9 E., N.M.P.M. Each offer was rejected insofar as it covered lands in the Carrizozo Lava Flow, which the State Office had designated as an area "where no oil and gas leasing is allowed."

Both appellants argue: 1) that the existence of the unleased block of land constituting the lava flow that might later be leased is a deterrent to exploration in the area; and 2) that the lava flow itself is extremely rugged and is not likely to be used for occupancy or drilling on the leaseholds. Both appellants indicate that they would be willing to accept a no surface occupancy stipulation on the portion of the offers in the lava flow.

In a memorandum from the Las Cruces District Manager to the State Director, New Mexico, dated August 6, 1975, which BLM submitted in response to the request of this office, the District Manager wrote that the final decision regarding natural or primitive area status for the Carrizozo Lava Flow would not be reached until late 1977, and that the BLM regarded as unacceptable any activity that might adversely affect future primitive area designation. The District Manager stated that lands within 1 mile of the edge of the lava flow could be leased with a no occupancy stipulation, as directional drilling would be a reasonable alternative to surface occupancy.

The District Manager expressed concern, however, that lands more than a mile from the edge of the lava flow, which cannot be reached by directional drilling from outside the flow area, cannot be leased without eventually allowing surface occupancy at some future date.

[1] The Secretary of the Interior and his delegates, under the discretionary authority granted by the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), are empowered to impose reasonable stipulations for the protection of surface resources and environmental and primitive area values in the issuance of public domain oil and gas leases. Richard P. Cullen, 18 IBLA 414 (1975); Bill J. Maddox, 17 IBLA 234 (1974); 43 CFR 3109.2-1. Although this Board will review protective stipulations

1/ The lease offers involved are Houston Oil and Minerals Corporation's offers NM 22406, NM 22408-22410, NM 22415, NM 22417, NM 22420-22421, and Leland A. Hodges, Trustee's, offers NM 22359-22360, NM 22362, NM 22371, NM 22375, NM 22380-22381, and NM 22383.

to determine that they have legitimate protective goals and are reasonably formulated to achieve those ends, Earl R. Wilson, 21 IBLA 395 (1975); Bill J. Maddox, *supra*; George A. Breene, 13 IBLA 53 (1973), the Board has approved the use of no surface occupancy lease stipulations when justified by the circumstances. Duncan Miller, 16 IBLA 349 (1974); Nuclear Corp. of New Mexico, 14 IBLA 341 (1974).

In this case appellants appear to want the lava flow area leased not from a desire to occupy the surface of the flow but rather from a desire to avoid the burden of future filings for these parcels if they are made available, and to prevent subsequent applicants from benefiting from the results of their exploration and development. Although their motives are not at issue, the appellants' offers to accept no surface occupancy stipulations for the lands in the lava flow may be adopted by the BLM in issuing leases and acceptance by the offerors would preclude subsequent objection to the restrictions.

In addition, we reiterate that in some circumstances a no surface occupancy clause may be acceptable even if a portion of the leasehold cannot be reached by slant drilling. See Nuclear Corp. of New Mexico, *supra*. Although the factual record here is insufficient, it appears from the parcels rejected that the area in each lease that could not be reached by slant drilling is minimal, and thus a partial no surface occupancy provision might not unreasonably restrict enjoyment of the leasehold.

As the BLM has indicated that it is willing to lease much of the land for which the offers are rejected, see Rainbow Resources, Inc., 17 IBLA 142 (1974), and appellants have offered to accept a no surface occupancy stipulation for the entire area at issue, the decisions rejecting the lease offers will be set aside and the cases remanded for reconsideration in light of this decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for further consideration consistent with this opinion.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

